(28)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench : Hon'ble Shri Justice Satish K. Agnihotri

WRIT PETITION (C) NO. 2018 OF 2007

Makhanlal & Others

Vs.

Shri Mangal Das Dharmadhikari & Others

ORDER

Post for 9th-04-2007

Sd/-
Satish K. Agnihotri
Judge

(26)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench : Hon'ble Shri Justice Satish K. Agnihotri

WRIT PETITION (C) NO. 2018 OF 2007

Petitioners

1. Makhanlal, S/o Rajhans, Aged about 47 years.
2. Ajuram, S/o Jagdish, Aged about 43 years.
3. Mohandas, S/o Prem, Aged about 42 years.
4. Chainlal Mahar, S/o Nandiya, Aged about 41 years.

All residents of village Nandiya, Tehsil Dongargaon, District Rajnandgaon (CG).

Versus

Respondents

1. Shri Mangal Das Dharmadhikari, Sadguru Kabir Saheb Samiti, Nandiya, Tahsil Dongargaon, District Rajnandgaon (CG).
2. The Collector, Rajnandgaon, District Rajnandgaon (CG).
3. Tahsildar, DOngargaon, District Rajnandgaon (CG).

Present :- Shri Anup Mazumdar, counsel for the petitioners.

Shri Utkarsh Verma, Dy. Govt. Advocate for the State/ respondents No.2 and 3.

ORDER

(Delivered on 9th April, 2007)

By this petition under Article 226 of the Constitution of India, the petitioners challenge the legality and validity of the order dated 20-6-2005 (Annexure-P/2) passed by the Tahsildar, Dongargaon, in revenue case No.01/A-19(1)/ year 2004-05 and the order dated

5-12-2006 (Annexure-P/3) passed by the Collector, Rajnandgaon in case No.01-A/19(1) year 2005-06, upholding the order dated 20-6-2005 passed by the Tahsildar whereunder the objection of the petitioners under the provisions of the Chhattisgarh Ceiling on Agricultural Holdings Act, 1960 (*for short "the Act, 1960"*).

2) The indisputable facts in nutshell are that the respondent No.1 preferred an application before the Collector, Rajnandgaon, for allotment of Government land admeasuring 79.94 acres situated in village Nadiya, District Rajnandgaon. The matter was referred to the Tahsildar for enquiry and report. The case was registered as revenue case No. 01/A-19(1)/ year 2004-05. The petitioners along with five others filed an objection submitting that the land in dispute was declared as surplus land under the provisions of the Act, 1960. The same was allotted to Sant Kabir Sahakari Samiti Maryadit, Nadiya (*for short "Samiti"*) for agricultural purposes. The objectors were the members of the said Samiti. On account of defaults in performance, the said Samiti was dissolved and the land re-vested in the State Government under the provisions of Section 35 of the Act, 1960. The petitioners made an application stating that they were members of the said dissolved Samiti and as such they are entitled to allotment under letter dated 29-7-1997 (Annexure-P/1) issued by the Revenue Department.

3) The Tahsildar, Dongargaon, vide order dated 20-6-2005 stated that once the power of allotment under the provisions of the Act, 1960 has been exercised and the same land is re-vested in the State Government on dissolution of the said Samiti the provisions of the Act, 1960 would not be applicable for re-allotment of the said land. The

Government land may be allotted under the provisions of Revenue Book Circular Part IV-3. Thus, the petitioners on the ground of being members of the dissolved Samiti have no right to object the allotment of land in favour of the respondent No.1 accordingly their objection was rejected and the matter was fixed for evidence.

4) Being aggrieved and dissatisfied with the order dated 20-6-2005, the petitioners preferred revision bearing No. 01-A/19(1) year 2005-06 before the Collector, Rajnandgaon. The Collector, Rajnandgaon, by his order dated 5-12-2006 upholding the reasons and the order passed by the Tehsildar, dismissed the revision and directed the Tahsildar to proceed with the matter for allotment of the land.

5) Being aggrieved and dissatisfied, the petitioners have filed this petition challenging the legality and validity of the order dated 20-6-2005 (Annexure-P/2), passed by the Tahsildar. The main grounds of challenge are that the authorities below ought to have applied the provisions of Section 35 of the Act, 1960 as the land was a surplus land under provisions of the Act, 1960. It was further contended that in view of the executive instructions dated 29-7-1997 (Annexure-P/1), the petitioners being members of the dissolved Samiti had preferential right to allotment.

6) I have heard learned counsel for the petitioners, perused the pleadings and documents appended thereto.

7) It is evident that the finding of the Tahsildar confirmed by the Collector to the effect that the allotment of surplus land under the provisions of the Act, 1960 can be exercised only once and after re-vesting of the said land in the State Government, the State

Government becomes the owner of the said land and the same is treated as Government land. The clear provisions for allotment of the Government land is under Revenue Book Circular Part IV-3. The respondent No.1 has applied for allotment of the said land under the provisions of Revenue Book Circular Part IV-3 wherein there was no scope for objection by the petitioners on the strength of their being members of the dissolved Samiti to which the surplus land was initially allotted and the disputed surplus land was re-vested in the Government after dissolution of the Samiti. Thus, the members including the petitioners have no right to object the allotment of land under the provisions of the Revenue Book Circular Part IV-3.

8) It is well nigh settled that exercise of discretionary power under Article 226 of the Constitution of India is one of judicial review, which cannot be used to upset conclusion of facts unless such conclusions are perverse. The Court has to examine the procedural irregularity for coming to a conclusion not the conclusion itself. This Court should refrain from substituting the opinions of authorities below by its own opinion in absence of any perversity, illegality and irregularity in the impugned order passed by the authorities below.

9) As a result and in view of the foregoing, the petition deserves to be dismissed and is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Gowri